



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R08-OAR-2021-0931; FRL-9541-01-R8]

Air Plan Conditional Approval; Colorado; Revisions to Regulation Number 7 and Oil and Natural Gas RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing conditional approval of portions of State Implementation Plan (SIP) revisions submitted by the State of Colorado on May 14, 2018 and May 13, 2020. The revisions are to Colorado Air Quality Control Commission (Commission or AQCC) Regulation Number 7 (Reg. 7), and address Colorado's SIP obligation to require reasonably available control technology (RACT) for sources covered by the 2016 oil & natural gas control techniques guidelines (CTG or CTGs) for Moderate nonattainment areas under the 2008 ozone National Ambient Air Quality Standard (NAAQS). These revisions address the final remaining pieces of the May 14, 2018 and May 13, 2020 submittals that we have not previously acted on. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R08-OAR-2021-0931, to the Federal Rulemaking Portal: <https://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from www.regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically in www.regulations.gov. To reduce the risk of COVID-19 transmission, for this action we do not plan to offer hard copy review of the docket. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the docket.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD-IO, 1595 Wynkoop Street, Denver, Colorado, 80202-1129, telephone number: (303) 312-6563, email address: fulton.abby@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

I. What Action is the EPA Proposing to Take?

As explained below, the EPA is proposing to conditionally approve various revisions to the Colorado SIP that were submitted to the EPA in two separate SIP submittals; one was received by the EPA on May 14, 2018 and the other on May 13, 2020. In particular, we propose to conditionally approve into the SIP certain Reg. 7 rules to meet the 2008 8-hour ozone NAAQS

oil and gas CTG RACT requirements for Moderate nonattainment areas that were not acted on in our July 3, 2018,¹ February 24, 2021,² and November 5, 2021³ rulemakings. This proposed conditional approval is based on the State's commitment to make specified further revisions to these rules, and submit them for approval into the SIP, to address deficiencies identified in our November 5, 2021 rulemaking.

Under section 110(k)(4) of the CAA, the EPA may conditionally approve a plan based on a commitment from a state to adopt specific enforceable measures by a date certain no later than one year from the date of approval. The conditionally approved provisions are a part of the SIP and thus are federally enforceable as of the effective date of the final conditional approval. If the EPA conditionally approves the identified Reg. 7 rules, the State must meet its commitment to submit the necessary SIP revisions to the EPA by June 30, 2022. If the State fails to do so, this action will automatically become a disapproval on that date. If the State submits timely SIP revisions but the EPA finds the SIP submittal to be incomplete, this action will become a disapproval on the date of the EPA's incompleteness finding. In either case, the EPA will notify the State by letter that the conditional approval has converted to a disapproval, and as of the date of that notification the conditionally approved measures will no longer be a part of the approved Colorado SIP. The EPA subsequently will publish a document in the *Federal Register* notifying the public that the conditional approval converted to a disapproval.

If the State submits the necessary SIP revisions by June 30, 2022, the conditionally approved provisions will remain a part of the SIP until the EPA approves or disapproves the new SIP revisions through notice-and-comment rulemaking. If the EPA takes final action approving

¹ Final Rule, Approval and Promulgation of State Implementation Plan Revisions; Colorado; Attainment Demonstration for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, and Approval of Related Revisions, 83 FR 31068, 31069-31072.

² Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7 and RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 11125, 11126-11127.

³ Final Rule, Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for the 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 61071, 61072.

the new revisions into the SIP, in the same final action the EPA will also convert the conditional approval to a full approval by making appropriate revisions to the description of the SIP in the Code of Federal Regulations. If the EPA disapproves the new SIP revisions, the conditional approval will convert to a disapproval, and the conditionally approved provisions will no longer be a part of the approved Colorado SIP.

Any conditional approval action that converts to a disapproval will start an 18-month clock for application of mandatory sanctions under CAA section 179(b) and a two-year clock for the EPA to promulgate a Federal implementation plan under CAA section 110(c)(1). The basis for our proposed action is discussed in this proposed rulemaking. Technical information that we are relying on, as well as the State's October 20, 2021 commitment letter, is in the docket, available at <http://www.regulations.gov>, Docket No. EPA-R08-OAR-2021-0931.

II. Background

2008 8-Hour Ozone NAAQS Nonattainment

On March 12, 2008, the EPA revised both the primary and secondary NAAQS for ozone to a level of 0.075 parts per million (ppm) (based on the annual fourth-highest daily maximum 8-hour average concentration, averaged over 3 years), to provide increased protection of public health and the environment.⁴ The 2008 ozone NAAQS retains the same general form and averaging time as the 0.08 ppm NAAQS set in 1997, but is set at a more protective level. Specifically, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm.⁵

Effective July 20, 2012, the EPA designated as nonattainment any area that was violating the 2008 8-hour ozone NAAQS based on the three most recent years (2008–2010) of air

⁴ Final rule, National Ambient Air Quality Standards for Ozone, 73 FR 16436 (March 27, 2008). The EPA has since further strengthened the ozone NAAQS, but the 2008 8-hour standard remains in effect. See Final Rule, National Ambient Air Quality Standards for Ozone, 80 FR 65292 (Oct. 26, 2015).

⁵ 40 CFR 50.15(b).

monitoring data.⁶ With that rulemaking, the Denver-Boulder-Greeley-Ft. Collins-Loveland, Colorado area (Denver or DMNFR Area) area was designated nonattainment and classified as Marginal.⁷ Ozone nonattainment areas are classified based on the severity of their ozone levels, as determined using the area's design value. The design value is the 3-year average of the annual fourth highest daily maximum 8-hour average ozone concentration at a monitoring site.⁸ Areas that were designated as Marginal nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2015, based on 2012–2014 monitoring data.⁹

On May 4, 2016, the EPA published its determination that the Denver Area, among other areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Moderate ozone nonattainment status.¹⁰ Colorado submitted SIP revisions to the EPA on May 31, 2017 to meet the Denver Area's requirements under the Moderate classification.¹¹ The EPA took final action on July 3, 2018, approving the majority of the May 31, 2017 submittal, but deferring action on portions of the submitted Reg. 7 RACT rules.¹² On February 24, 2021, the EPA took final action approving additional RACT SIP obligations for Moderate ozone nonattainment areas.¹³

Areas that were designated as Moderate nonattainment were required to attain the 2008 8-hour ozone NAAQS no later than July 20, 2018, based on 2015–2017 monitoring data.¹⁴ On December 26, 2019, the EPA published its determination that the Denver Area, among other

⁶ Final rule, Air Quality Designations for the 2008 Ozone National Ambient Air Quality Standards, 77 FR 30088 (May 21, 2012).

⁷ *Id.* at 30110. The nonattainment area for the 2008 ozone standard includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas and Jefferson Counties, and portions of Larimer and Weld Counties. *See* 40 CFR 81.306.

⁸ 40 CFR part 50, appendix I.

⁹ *See* 40 CFR 51.903.

¹⁰ Final rule, Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards, 81 FR 26697 (May 4, 2016).

¹¹ CAA section 182 outlines SIP requirements applicable to ozone nonattainment areas in each classification category. Areas classified Moderate under the 2008 8-hour ozone NAAQS had a submission deadline of January 1, 2017 for these SIP revisions. 81 FR at 26699.

¹² 83 FR at 31068.

¹³ 86 FR 11125.

¹⁴ *See* 40 CFR 51.903.

areas, had failed to attain the 2008 8-hour ozone NAAQS by the attainment deadline, and that it was accordingly reclassified to Serious ozone nonattainment status.¹⁵

SIP Control Measures, Reg. 7

Colorado's Reg. 7, entitled "Control of Ozone via Ozone Precursors and Control of Hydrocarbons via Oil and Gas Emissions," contains general RACT requirements as well as specific emission limits applicable to various industries. The EPA approved the repeal and re-promulgation of Reg. 7 in 1981,¹⁶ and has approved various revisions to parts of Reg. 7 over the years. In 2008, the EPA approved revisions to the control requirements for condensate storage tanks in Section XII,¹⁷ and later approved revisions to Reg. 7, Sections I through XI and Sections XIII through XVI.¹⁸ The EPA also approved Reg. 7 revisions to Section XVII.E.3.a establishing control requirements for rich-burn reciprocating internal combustion engines.¹⁹ In 2018 the EPA approved Reg. 7 revisions in Sections XII (volatile organic compound (VOC) emissions from oil and gas operations) and XIII (emission control requirements for VOC emissions from graphic art and printing processes), as well as non-substantive revisions to numerous other parts of the regulation.²⁰

In February 2021, the EPA approved Reg. 7 revisions in Sections I (Applicability), IX (Surface Coating Operations), X (Use of Cleaning Solvents), XIII (Graphics Arts and Printing), XVI (Controls of Emissions from Stationary and Portable Engines and Other Combustion Equipment in the 8-Hour Ozone Control Area), and XIX (Control of Emissions from Specific Major Sources of VOC and/or NO_x in the 8-hour Ozone Control Area). Revisions to incorporation by reference dates to rules and reference methods in Sections II, VI, VIII, IX, X,

¹⁵ Final rule, Finding of Failure To Attain and Reclassification of Denver Area for the 2008 Ozone National Ambient Air Quality Standard, 84 FR 70897 (Dec. 26, 2019); *see* 40 CFR 81.306.

¹⁶ Final rule, Colorado: Approval and Promulgation of State Implementation Plans, 46 FR 16687 (March 13, 1981).

¹⁷ Final rule, Approval and Promulgation of Air Quality Implementation Plans; State of Colorado; Regulation No. 7, Section XII, Volatile Organic Compounds From Oil and Gas Operations, 73 FR 8194 (Feb. 13, 2008).

¹⁸ Final rule, Approval and Promulgation of State Implementation Plans; State of Colorado; Attainment Demonstration for the 1997 8-Hour Ozone Standard, and Approval of Related Revisions, 76 FR 47443 (Aug. 5, 2011).

¹⁹ Final rule, Approval and Promulgation of Implementation Plans; State of Colorado; Regional Haze State Implementation Plan, 77 FR 76871 (Dec. 31, 2012).

²⁰ *See* 83 FR at 31068, 31071.

XII, XIII, XVI and XVII were also approved, as well as non-substantive revisions to numerous other parts of the regulation.²¹

Most recently, in November 2021, the EPA approved submitted revisions to Sections II (general provisions), XII (Volatile Organic Compound Emissions from Oil and Gas Operations), and XVIII (emissions from natural gas-actuated pneumatic controllers located at or upstream of natural gas processing plants) of Reg. 7 from State submissions in 2018 and 2019.²² From the State's 2020 submission, the EPA approved revisions that fully reorganized Reg. 7. into Parts A–E; updated requirements for gasoline transport trucks, bulk terminals, and service stations in Part B; added general solvent use requirements in Part C, Section II.F; and added stationary internal combustion engine and flare RACT requirements for major sources of VOC and/or NO_x in the Denver Area in Part E. Revisions to incorporation by reference dates to rules, updates to reference methods, and typographical, grammatical and formatting corrections were made throughout Reg. 7. Additionally, the EPA finalized approval of the State's negative declaration – (that is, its statement that there are no covered sources in the DMNFR Area) as to the aerospace CTG.

In our November 5, 2021 final rule, we deferred action on several portions of the submittals, because we determined that Colorado's SIP revisions did not meet oil and gas CTG RACT requirements for testing and monitoring requirements for combustion control devices for storage vessels and centrifugal compressors. On October 20, 2021, Colorado submitted a letter to the EPA committing to correct the deficiencies through rulemaking in December 2021. On December 17, 2021, the Colorado AQCC approved revisions that are consistent with the commitments in the letter.²³ Based on the State's commitment to correcting the deficiencies identified by the EPA, and recognizing the substantial progress made toward fulfilling that

²¹ 86 FR 11125.

²² 86 FR 61071.

²³ See <https://www.coloradosos.gov/CCR/eDocketDetails.do?trackingNum=2021-00594>.

commitment, we are now proposing conditional approval of the oil and gas CTG RACT rules for which we deferred action on in November 2021.

III. Summary of the State's SIP Submittals

We are proposing to take action on parts of Colorado SIP submittals made on two different dates:

May 14, 2018 Submittal

This submittal contains amendments to Reg. 7, Sections XII (Volatile Organic Compound Emissions from Oil and Gas Operations) and XVIII (Natural Gas-Actuated Pneumatic Controllers Associated with Oil and Gas Operations) to meet RACT for oil and gas sources covered by the EPA's 2016 Oil and Gas CTG.²⁴ We have previously acted on all parts of this SIP submittal except for revisions to Reg. 7, Section XII.J.1., concerning centrifugal compressors, as to which we are now proposing conditional approval.

May 13, 2020 Submittal

This submittal includes a full reorganization of Reg. 7 into Parts A-E, amends oil and gas storage tank requirements to establish a storage tank control threshold, updates storage tank monitoring requirements, and aligns related recordkeeping and reporting requirements. The submittal also updates RACT requirements for major sources of VOC and NO_x in the DMNFR area, including expanded categorical combustion equipment requirements in Part E, Section II (formally Section XVI.D.) and new categorical general solvent use requirements in Part C, Section II (formerly Section X.). The submittal also includes updates to the requirements for gasoline transport truck testing and vapor control systems, and contains typographical, grammatical, and formatting corrections throughout. We have previously acted on all parts of this SIP submittal except for revisions to Reg. 7, Sections I.D., I.E, and I.F. concerning storage tanks, and Section I.J.1. concerning centrifugal compressors. We are now proposing conditional approval of those revisions.

²⁴ Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001 (Oct. 2016).

We are proposing to conditionally approve these measures into the SIP because, as discussed further below, the State has committed to adopt additional measures to address the concerns noted in our November 5, 2021 final rule. These measures are described in the State's October 20, 2021 commitment letter:

October 20, 2021 Commitment Letter

In its letter, which is included in the docket for this proposed action, the State committed to adopt SIP revisions adding monitoring and performance testing requirements for storage vessel and wet seal centrifugal compressor combustion devices in Reg. 7, Part D, Section I. This commitment to remedy the deficiencies explained in our November 5, 2021 rule is the basis for our proposal to conditionally approve the previously submitted revisions. Further, as discussed above, with the December 17, 2021 action by the Colorado Air Quality Commission the State has made substantial progress toward fulfilling its commitment.

IV. Procedural Requirements

The CAA requires that states meet certain procedural requirements before submitting SIP revisions to the EPA, including the requirement that states adopt SIP revisions after reasonable notice and public hearing.²⁵ In previous rules, we have already found that Colorado has satisfied this requirement with respect to the SIP submittals under consideration here. For additional background and previous findings, see the proposed and final rules at 85 FR 63066, 63068 (Oct. 6, 2020); 86 FR 11125 (Feb. 24, 2021); 86 FR 32656, 32658 (June 22, 2021); and 86 FR 61071 (Nov. 5, 2021).²⁶

V. Reasonably Available Control Technology (RACT) Analysis

A. Background

²⁵ CAA section 110(a)(2).

²⁶ For the anticipated SIP revisions that were described in the State's October 20, 2021 commitment letter, the AQCC provided notice in the Colorado Register on September 20, 2021 and held public hearings on the revisions on December 14-17, 2021. The Commission adopted the revisions on December 17, 2021. After the State submits these new measures as SIP revisions, we will evaluate the sufficiency of the public process in separate actions in which we will propose and, if appropriate, finalize approval of the commitment submission into the SIP.

The CAA requires that SIPs for certain nonattainment areas include RACT for each source of VOC in the area covered by a CTG, and for all other major stationary sources of VOC.²⁷ The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.²⁸ The CAA amendments of 1990 introduced the requirement for existing major stationary sources of NO_x in certain ozone nonattainment areas to install and operate NO_x RACT.²⁹

The EPA provides guidance concerning what types of controls can constitute RACT for a given source by issuing CTG and Alternative Control Techniques (ACT) documents.³⁰ States must submit a SIP revision requiring the implementation of RACT for each source in the area for which the EPA has issued a CTG (for each source in the area that is covered by a CTG issued by the EPA), and for any major source in the area not covered by a CTG.³¹

On October 20, 2016, the EPA issued final CTGs for reducing VOC emissions from existing oil and natural gas equipment and processes.³² Under the schedule in the oil and gas CTG, revisions to SIP provisions to address RACT for sources covered by the CTG were due on October 27, 2018. Sources covered by the CTG include those in 2008 ozone NAAQS nonattainment areas classified as Moderate (or higher). The emissions controls determined by the State to be RACT for sources covered by the oil and gas CTG were required to be implemented as soon as practicable, but no later than January 1, 2021.³³ In November 2017, the Commission

²⁷ CAA section 182(b)(2).

²⁸ See Proposed rule, General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas--Supplement (on Control Techniques Guidelines), 44 FR 53761, 53762 (Sep. 17, 1979).

²⁹ CAA section 182(f), appropriate, finalize approval of the commitment submission into the SIP.

²⁹ CAA section 182(b)(2).

³⁰ See <https://www.epa.gov/ground-level-ozone-pollution/control-techniques-guidelines-and-alternative-control-techniques> (accessed January 6, 2022) for a list of the EPA-issued CTGs and ACTs (also available within the docket).

³¹ See CAA section 182(b)(2). See also Note, RACT Qs & As—Reasonably Available Control Technology (RACT): Questions and Answers, William Harnett, Director, Air Quality Policy Division, EPA (May 2006), available at https://www3.epa.gov/ttn/naaqs/aqmguide/collection/cp2/20060518_harnett_ract_q&a.pdf.

³² Notice of availability, Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry, 81 FR 74798 (Oct. 27, 2016); see also Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001 (Oct. 2016).

³³ Docket ID No. EPA-HQ-OAR-2015-0216-0238.

adopted revisions to Reg. 7 that addressed RACT requirements for each source covered by the oil and gas CTG.

B. Evaluation of RACT for Oil and Gas CTG Sources

As part of its May 14, 2018 submittal and as supplemented in connection with the December 2021 AQCC rulemaking, the Colorado Air Pollution Control Division (Division) conducted a RACT analysis to demonstrate that the RACT requirements for the oil and gas CTG for covered sources in the DMNFR 2008 8-hour ozone NAA have been fulfilled. The Division conducted the RACT analysis by listing the state regulations that implement or exceed the RACT recommendations in the oil and gas CTG, and by detailing the basis for concluding that these regulations fulfill RACT, through comparison with established RACT recommendations described in the CTG. The RACT demonstration is contained in the State's Technical Support Document for Reasonably Available Control Technology for the Oil and Gas Industry (document set 38) of the May 14, 2018 submittal; at pp. 417-425 of the May 13, 2020 submittal; and in the Supplement to the Technical Support Document for RACT for the Oil and Gas Industry (draft Oct. 28, 2021).³⁴ We have reviewed Colorado's new and revised VOC rules for the categories covered by the oil and gas CTG and the demonstrations submitted by Colorado, and have compared the emission limitations and control requirements with those of the CTG.³⁵ On November 5, 2021, we approved the majority of the May 14, 2018 and May 13, 2020 submittals, but deferred action on Reg. 7 Sections I.D., I.E, and I.F. from the May 13, 2020 submittal for storage tanks, and Section I.J.1. for centrifugal compressors. The scope of this proposal only covers the parts of the May 14, 2018 and May 13, 2020 submittals that the EPA deferred action on in our November 5, 2021 final rule. This proposal is not intended to re-open or re-visit any aspect of the November 5, 2021 final rule. The following section includes a detailed discussion of the rules that the EPA is proposing to take action on here.

³⁴ Cited materials are in the docket for this action.

³⁵ See the May 2021 and December 2021 EPA TSDs included in the docket for this action.

Based on our review, and as supported by the State's commitment to develop and submit additional testing and monitoring requirements, we propose to conditionally approve the submitted rules as consistent with the control measures, definitions, recordkeeping, and test methods in the CTG and the CAA, and as providing for the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. Therefore, we propose to conditionally approve the rules noted above, as to which we deferred acting on in our November 5, 2021 final rule, as satisfying CAA RACT requirements for the oil and gas CTG sources in the DMNFR Area.³⁶ For more information, see the EPA TSDs prepared in conjunction with our November 5, 2021 final rule³⁷ and this action.

VI. The EPA's Evaluation of SIP Control Measures in Reg. 7

We evaluated Colorado's May 14, 2018 and May 13, 2020 submittals regarding revisions to the State's Reg. 7 to meet RACT requirements for sources covered by the oil and gas CTG. We approved the majority of the State's submissions in our November 5, 2021 final rule.³⁸ We did not, however, finalize our approval of several provisions related to the State's RACT determination for the oil and gas CTG, in light of our evaluation of issues raised in comments received on our June 22, 2021 proposed rule.³⁹ The provisions that the EPA deferred action on are related to testing and monitoring of combustion control devices. In this document, we are proposing to conditionally approve the limited remaining pieces of the May 14, 2018 and May 13, 2020 submittals that were not previously acted on. More specifically, in the EPA's November 5, 2021 final rule, we deferred action on the following: Reg. 7, Section XII. J.1.⁴⁰ from the May 14, 2018 submittal for centrifugal compressors; Sections I.D., I.E, and I.F. from the May 13, 2020 submittal for storage tanks; and I.J.1. for centrifugal compressors. This

³⁶ See <https://www.epa.gov/ground-level-ozone-pollution/ract-information>.

³⁷ 86 FR 61071 (Nov. 5, 2021).

³⁸ *Id.*

³⁹ Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area, 86 FR 32656.

⁴⁰ Since renumbered to Colorado Reg. 7, Part D, Section I.J.1.

document proposes to conditionally approve only these specific provisions. Our conditional approval is based on the State's October 20, 2021 commitment to make specified further revisions and submit them to the EPA for approval. These further revisions have been approved by the Colorado AQCC but have not yet been formally submitted to the EPA; we will act on them separately after they are submitted.

For ease of review, Colorado submitted the full text of Reg. 7 as SIP revisions (with the exception of provisions designated "State Only"). The EPA is only seeking comment on Colorado's proposed substantive changes to the SIP-approved version of Reg. 7, which are described below. We are not seeking comment on the revised portions of the regulation that the EPA previously approved into the SIP.

As noted above, Colorado designated various parts of Reg. 7 State Only, and in Section I.A.1.c indicated that sections designated State Only are not federally enforceable. The EPA concludes that provisions designated State Only have not been submitted for the EPA's approval, but are provided for informational purposes. Hence, the EPA is not proposing to act on the portions of Reg. 7 designated State Only, and this proposed rule does not discuss them further except as relevant to discussion of the portions of the regulation that Colorado intended to be federally enforceable.

Evaluation

A. May 14, 2018 SIP Submittal and October 20, 2021 Commitment Letter

The State's May 14, 2018 SIP submittal contains amendments to Reg. 7, Sections II.B., XII and XVIII to meet RACT for oil and gas sources covered by the EPA's 2016 oil and gas CTG. The submittal also includes clarifying revisions and typographical, grammatical, and formatting corrections throughout Reg. 7. We finalized approval of the majority of the May 14, 2018 SIP revisions in our November 5, 2021 rulemaking⁴¹ but deferred action on Reg. 7, Section XII.J.1. based on our evaluation of issues raised in adverse comments received on the

⁴¹ 86 FR 61071. EPA is not reopening any aspect of that Nov. 5, 2021 final rule in this proposal.

corresponding proposal.⁴² Colorado sent the EPA a letter committing to correct the deficiencies, and based on that commitment we are now proposing to take action on Section XII.J.1. for centrifugal compressors.

a. Section XII.J.1

Section XII.J.1 contains new provisions for centrifugal compressors. Section XII.J.1.a. requires that by January 2, 2018, VOC emissions from wet seal fluid degassing systems on wet seal centrifugal compressors located between the wellhead and the point of custody transfer to the natural gas transmission and storage segment must be reduced by at least 95%. Section XII.J.1.b. requires wet seal fluid degassing systems to be equipped with continuous, impermeable covers that are connected through a closed vent system that routes emissions from the wet seal fluid degassing system to the process or control device. Section XII.J.1.c. requires annual visual inspections of the cover and closed vent systems for defects that could result in air emissions.

Under Section XII.J.1.d., owners or operators must conduct annual EPA Method 21 inspections of covers and closed vent systems to determine whether they operate with VOC emissions less than 500 ppm. Section XII.J.1.e. requires first attempts at repair to occur no later than five days after detecting defects or leaks, and repairs to be completed no later than 30 days after detection. Section XII.J.1.f. sets forth criteria for delaying inspection or repair due to unsafe conditions and accessibility issues. Owners or operators are required to maintain records of each cover or closed vent system that is unsafe or difficult to inspect and schedule for inspection when circumstances allow.

Section XII.J.1.g. includes requirements for monthly inspections of combustion devices to ensure that the devices are operating with no visible emissions.

⁴² See “Comments on Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area,” July 22, 2021. Available within the docket for this action and also on [regulations.gov](https://www.regulations.gov) docket ID EPA-R08-OAR-2021-0262-0018.

Section XII.J.1.h. includes recordkeeping requirements to demonstrate compliance with Section XII.J.1. Owners and operators must maintain records for a minimum of five years. As an alternative to the inspection, repair, and recordkeeping provisions, owners and operators may inspect, repair, and document cover and closed vent systems in accordance with the LDAR program in Section XII.L. Section XII.J.1.j. allows owners and operators to comply with emissions, inspections, repair, and recordkeeping provisions of a New Source Performance Standard (NSPS) including 40 CFR part 60, subparts OOOO and OOOOa in lieu of Sections XII.J.1.a. through i.

The oil and gas CTG recommends visible emissions and performance tests to demonstrate that the combustion devices being used meet the 95% VOC emission reduction RACT level of control.⁴³ After reviewing comments received⁴⁴ on our June 22, 2021 proposal to approve, among other things, Section XII.J.1 into the SIP,⁴⁵ we determined that Colorado's SIP submittals do not include requirements for performance testing of combustion devices at wet seal centrifugal compressors. We therefore recommended that the State adopt performance testing and associated recordkeeping and reporting requirements to adequately address RACT for centrifugal compressors.

Colorado's October 20, 2021 letter commits to adding visible emission testing and repair requirements for combustion devices in Section I.J.1.g. The comment letter also commits to adding Section I.J.1.h., which would require performance testing of combustion devices in accordance with Section 60.5413a(b) by May 1, 2023, and subsequent performance tests no longer than 60 months following the previous performance test. Control device models tested in accordance with 40 CFR part 60, subpart OOOOa, §60.5413a(d) and demonstrating continuous compliance in accordance with 40 CFR part 60, subpart OOOOa, §60.5413a(e)(1) would not be

⁴³ P. 5-28 of the Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16.-001 (Oct. 2016).

⁴⁴ P. 19 of "Comments on Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area," July 22, 2021.

⁴⁵ 86 FR 32656.

subject to the performance test requirement. Section I.J.i.(i)(E) would require records of control device performance tests or manufacturer demonstration of control device model performance tests, and associated inlet gas flow rates. Section I.J.1.i.(i)(F) would require records of visual inspections including the time and date of each inspection and a description of any problems observed, description and date of any corrective action(s) taken, and name of employee or third party performing corrective action(s). These anticipated revisions described in Colorado's commitment letter are consistent with periodic testing recommendations in the oil and gas CTG. Accordingly, we find that the revisions committed to for Sections I.J.1.g., h., and i. in the State's October 20, 2021 letter would address the identified deficiencies, and we propose to conditionally approve Section XII.J.1.

B. May 13, 2020 SIP Submittal

The State's May 13, 2020 SIP submittal contains amendments to Reg. 7, including control for VOC emissions from oil and gas operations. We finalized approval of the majority of the May 13, 2020 SIP revisions in our November 5, 2021 rulemaking,⁴⁶ but based on concerns related to those raised in comments received on the corresponding proposal, we deferred action on SIP revisions to the State's storage tank control strategy in Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, and I.F.3.c.–c.(i)(C) because those Sections are related to the performance testing of storage tank combustion equipment deficiencies identified in Section I.E. As part of the October 20, 2021 letter submitted by Colorado to the EPA, the State committed to correcting the deficiencies in Section I.E., and based on that commitment we are now taking action on Part D, Section I.D-F. storage tank controls.

a. Section I.D.

Section I.D. contains provisions for storage tank emissions controls. In 2004 the

⁴⁶ 86 FR 61071. The EPA is not reopening any aspect of that Nov. 5, 2021 final rule in this proposal.

Commission adopted the initial system-wide control strategy, which required operators to reduce emissions from their system of condensate tanks. The “system” was composed of condensate tanks with uncontrolled actual VOC emissions equal to or greater than two tons per year (tpy), and allowed operators to decide which tanks to control if emissions from the “system” were reduced by specified percentages. The revisions in Section I.D. replace the system-wide control strategy with an individual storage tank control strategy in Section I.D.3. Operators in the DMNFR Area were required to install controls on storage tanks with uncontrolled actual VOC emissions equal to or greater than four tpy by May 1, 2020. The control requirements in Section I.D. were expanded to include crude oil and produced water tanks. According to the Division, this will result in more tanks being controlled.⁴⁷ Section I.D.3.a.(i) requires that storage tanks with uncontrolled actual emissions of VOC equal to or greater than four tpy collect and control emissions from each storage tank by routing emissions to and operating air pollution control equipment that achieves a VOC control efficiency of 95%; combustion devices must have a design destruction efficiency of at least 98% for VOC unless authorized by permit before March 1, 2020. Section I.D.3.c. requires that storage tanks below the four tpy threshold that increase emissions above the threshold must be in compliance within 60 days of the first date of the month in which the threshold was exceeded. The Commission has determined that the four tpy threshold and implementation timetable is cost-effective, technically feasible, and will ensure no backsliding as provided for in the CAA, Section 110(l).⁴⁸

Colorado also submitted a provision for inclusion in the SIP that was previously State-only. Section I.D.2.a. requires that operators of newly constructed tanks employ controls during the first 90 days after the date of first production. It is appropriate to include this provision in the SIP because it will ensure that the requirements for emissions controls on startup are federally

⁴⁷ See pp. 592-593 of the May 13, 2020 submittal.

⁴⁸ See p. 591 of the May 13, 2020 submission.

enforceable, to avoid confusion as to whether compliance with the requirement can be considered a limitation upon a source's potential to emit for purposes of permitting.

b. Section I.E.

Section I.E. contains provisions for monitoring of storage tanks and air pollution control equipment. Section I.E. was revised to apply the monitoring requirements for all storage tanks controlled pursuant to Section I.D., which will ensure monitoring of condensate tanks, crude oil, and produced water tanks on a weekly basis per Section I.E.2.c. The required inspections have also been updated to include elements that can impact the performance of well production facility equipment and reduce emissions including checking that burner trays are not visibly clogged, that pressure relief valves are properly sealed, and that vent lines are closed. Inspection documentation requirements in former Section XII.E.3. were removed and moved to Section I.F.2.c.(iii) in order to condense all recordkeeping requirements in Section I.F.

The oil and gas CTG recommends periodic performance testing to demonstrate compliance with the recommended RACT level of control.⁴⁹ After reviewing comments received⁵⁰ on our June 22, 2021 proposal⁵¹ to, among other things, approve RACT for storage tanks subject to the oil and gas CTG, we determined that Colorado's SIP submittals do not include requirements for performance testing of combustion devices at storage tanks. We therefore recommended that the State adopt performance testing and associated recordkeeping and reporting requirements to adequately address RACT for storage tanks.

Colorado's October 20, 2021 letter commits to adding new performance testing requirements for control devices in Section I.E.3. As described in the commitment letter, Section I.E.3.a. will require that storage vessels that have the potential for VOC emissions equal to or greater than six tpy (control action emissions) conduct periodic performance testing of control devices to comply

⁴⁹ P. 4-25 of the Control Techniques Guidelines for the Oil and Natural Gas Industry, EPA-453/B-16-001 (Oct. 2016).

⁵⁰ P. 19 of "Comments on Approval and Promulgation of Implementation Plans; Colorado; Revisions to Regulation Number 7; Aerospace, Oil and Gas, and Other RACT Requirements for 2008 8-Hour Ozone Standard for the Denver Metro/North Front Range Nonattainment Area," July 22, 2021.

⁵¹ 86 FR 32656.

with the 95% VOC control efficiency requirement in Section I.D.3.a.(i). Section I.E.3.a.(i) will require that performance testing be conducted in accordance with Section 60.5413a(b) by May 2023, and that subsequent performance testing occur no more than 30 months following the previous performance test. Section I.E.3.a.(ii) will exempt control device models that have been tested in accordance with Section 60.5413a(d) and that are demonstrating compliance in accordance with Section 60.5413a(e)(1) from performance test requirements in Section I.E.3.a.(i). Section I.E.3.a.(iii) requires storage vessels to maintain records of performance tests or manufacturer demonstrations and associated inlet gas flow rate records specified in Section I.E.3.a.(ii) for five years and to make records available to the Division upon request. These revisions are consistent with periodic testing recommendations in the oil and gas CTG.

c. Section I.F.

Section I.F. contains provisions for storage tank recordkeeping and reporting. As a result of replacing the system-wide control strategy with the fixed control threshold in Section I.D., recordkeeping and reporting requirements for demonstrating compliance with Section I.D. were revised in Section I.F. Operators subject to the system-wide control strategy were given until August 31, 2020, to submit the report for the time period in 2020 during which the system-wide control strategy remained effective (*i.e.* January 1 – April 30, 2020). Section I.F.2 contains the recordkeeping and reporting scheme for the tanks subject to the new four tpy control threshold provision. Under Sections I.F.2. and I.F.3., owners or operators of storage tanks subject to Section I.D.3. must maintain records and submit annual reports including information regarding inspections, calendar monthly VOC emissions, emission factors used, and the control efficiency of air pollution control equipment. Reports must be retained for a minimum of five years.

d. Section I.J.1.

Section I.J.1. (previously Section XII.J.1.) contains requirements for centrifugal compressors. The revisions to Section I.J.1.-j. renumber the regulation and do not change the substance of the requirements from the May 14, 2018 submittal.

The revisions described in this section⁵² will strengthen the SIP, and (once the State has submitted the revised regulations described in its commitment letter) will meet CAA and RACT requirements. We therefore propose to conditionally approve these revisions into the SIP.

VII. Proposed Action

For the reasons expressed above, the EPA proposes to conditionally approve revisions to Sections XII.J.1 of Reg. 7 from the State's May 14, 2018 submittal and Part D, Sections I.D., I.E., I.F., and I.J.1. of Reg. 7 from the State's May 13, 2020 submission as shown in Table 1.

The EPA is proposing to conditionally approve revisions to Reg. 7, Part D, Sections I.E.3. (including subsections (a)(i) through (iii)) and I.J.1.g. through i. Additionally, the EPA is proposing to conditionally approve Colorado's determination that Reg. 7, Part D satisfies RACT requirements for the Colorado ozone SIP for the 2016 oil and natural gas CTG. Under section 110(k)(4) of the Act, the EPA may approve a SIP revision based on a commitment by a state to adopt specific enforceable measures by a date certain, but not later than one year after the date of approval of the plan revision. On October 20, 2021, Colorado submitted a letter committing to adopt and submit specific revisions by June 30, 2022.⁵³ Specifically, the State has committed to add requirements for performance testing of certain combustion devices consistent with the EPA's oil and gas CTG by using the same frequency, testing protocol, and recordkeeping requirements that will apply to storage vessels and wet seal centrifugal compressors required to be controlled under the EPA's oil and gas CTG (i.e., storage vessels that have the potential for VOC emissions equal to or greater than 6 tpy). If we finalize our proposed conditional approval, Colorado must adopt and submit the specific revisions it has committed to by June 30, 2022 in order for the conditional approval to convert to full approval. We note that the Colorado AQCC adopted the revisions as outlined in the commitment letter on December 17, 2021, and we

⁵² With the exception of revisions described in the State's commitment letter, which have not been submitted as SIP revisions yet. As previously noted, those revisions will be evaluated in a separate rulemaking after the state submits them to the EPA.

⁵³ Although CAA section 110(k)(4) allows the EPA to make a conditional approval based on a commitment to act within one year of the final conditional approval, Colorado has committed to act on a much more accelerated schedule.

anticipate that the State will meet its deadline to submit these measures as SIP revisions. However, if Colorado does not comply with its commitment by June 30, 2022, if we find Colorado’s SIP submission provided to fulfill the commitment to be incomplete, or if we disapprove the SIP submission, this conditional approval will convert to a disapproval. If any of these occur and our conditional approval converts to a disapproval, that will constitute a disapproval of a required plan element under part D of title I of the Act, which will start an 18-month clock for sanctions⁵⁴ and the two-year clock for a federal implementation plan.⁵⁵

Table 1- List of Colorado Revisions to Reg. 7 that the EPA Proposes to Conditionally Approve

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| Revised Sections in May 14, 2018 and May 13, 2020 Submittals Proposed for Approval. |
| <i>May 14, 2018 Submittal</i> |
| XII.J.1 |
| <i>May 13, 2020 Submittal</i> |
| Part D, Sections I.D.–D.3.a.(i), I.D.3.b.–b.(i), I.D.3.b.(ii), I.D.3.b.(v), I.D.3.b.(vii), I.D.3.b.(ix), I.D.4.–I.E.1.a., I.E.2.–c.(ii), I.E.2.c.(iv)–c.(viii), I.F.–1.d., I.F.1.g.–g.(xii), I.F.1.h.–F.2.a., I.F.2.c.–c.(vi), I.F.3.–3.a, I.F.3.c.–c.(i)(C), and I.J.1. |
| <i>Revised Sections from Colorado’s Oct. 20, 2021 Commitment Letter</i> |
| Part D, Sections I.E.3.–a.(iii), I.J.1.g.–h., I.J.1.i., and I.J.1.i.(i)(E)–(F). |

VIII. Consideration of Section 110(l) of the CAA

Under section 110(l) of the CAA, the EPA cannot approve a SIP revision if the revision would interfere with any applicable requirements concerning attainment and reasonable further progress toward attainment of the NAAQS, or any other applicable requirement of the Act. In addition, section 110(l) requires that each revision to an implementation plan submitted by a state shall be adopted by the state after reasonable notice and public hearing.

The Colorado SIP revisions that the EPA is proposing to conditionally approve do not interfere with any applicable requirements of the Act. The Reg. 7 revisions submitted by the

⁵⁴ See CAA section 179(a)(2).

⁵⁵ See CAA section 110(c)(1)(B).

State on May 13, 2018 and May 14, 2020 are intended to strengthen the SIP and to serve as RACT for certain sources for the Colorado ozone SIP. Colorado's submittals provide adequate evidence that the revisions were adopted after reasonable public notices and hearings. Therefore, CAA section 110(l) requirements are satisfied.

IX. Environmental Justice Considerations

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs federal agencies to identify and address "disproportionately high and adverse human health or environmental effects" of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. Additionally, Executive Order 13985 (86 FR 7009, Jan. 25, 2021) directs federal agencies to assess whether and to what extent their programs and policies perpetuate systemic barriers to opportunities and benefits for underserved populations, and Executive Order 14008 (86 FR 7619, Feb. 1, 2021) directs federal agencies to develop programs, policies, and activities to address the disproportionately and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities.

To identify potential environmental burdens and susceptible populations in the DMNFR area, a screening analysis was conducted using the EJSCREEN⁵⁶ tool to evaluate environmental and demographic indicators within the area, based on available data from the Census Bureau's American Community Survey. The tool outputs showing the results of this assessment are in the docket for this action. These results indicate that within the DMNFR area there are census block groups that are above the national averages and above the 80th percentile (in comparison to the nation as a whole) for the numbers of persons experiencing low income and people of color. These populations may be vulnerable and subject to disproportionate impacts within the meaning of the executive orders described above. Further, as the EJSCREEN analysis is a screening-level

⁵⁶ EJSCREEN is an environmental justice mapping and screening tool that provides the EPA with a nationally consistent dataset and approach for combining environmental and demographic indicators; available at <https://www.epa.gov/ejscreen/what-ejscreen>.

assessment and not an in-depth review, it is possible that there are other vulnerable groups within the DMNFR area.

As to all vulnerable groups within the DMNFR area, as explained below we believe that this action will be beneficial and will tend to reduce impacts. When the EPA establishes a new or revised NAAQS, the CAA requires the EPA to designate all areas of the U.S. as either nonattainment, attainment, or unclassifiable. If an area is designated nonattainment for a NAAQS, the state must develop a plan outlining how the area will attain and maintain the standard by reducing air pollutant emissions. In this action we are proposing to conditionally approve state rules as meeting the CAA standard for RACT, which the EPA has defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. Approval of these rules into the SIP will establish federally enforceable requirements that will reduce emissions from oil and gas operations in the area. These requirements will contribute to the increased protection of those residing, working, attending school, or otherwise present in those areas, and we propose to determine that this rule, if finalized, will not have disproportionately high or adverse human health or environmental effects on communities with environmental justice concerns.

X. Incorporation by Reference

In this document, the EPA is proposing to include regulatory text in an EPA final rule that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference Colorado AQCC Regulation 7 pertaining to the control of ozone via ozone precursors and control of hydrocarbons from oil and gas emissions discussed in section VI of this preamble. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 8 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

XI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction.

Accordingly, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 8, 2022.

KC Becker,
Regional Administrator,
Region 8.